IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1379 of 1999
with
SPECIAL CIVIL APPLICATION No. 3514 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT AYURVED VIKAS MANDAL PHARMACY - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR HARSHAD M THAKORE for Petitioner(s) : 1,
GOVERNMENT PLEADER for Respondent(s) : 1, 3,
MR MUKESH H RATHOD for Respondent(s) : 2,
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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 05/12/2005

COMMON ORAL JUDGMENT

1. Special Civil Application No.1379/1999 is filed by the Gujarat Ayurved Vikas Mandal

Pharmacy, Junagadh, praying for quashing and setting aside the award passed by the Industrial Tribunal No.2, Rajkot, in Ref.(ITR) No.847/1984 on 3.10.1998 on the ground that the same was illegal, ultravires and void.

2. Special Civil Application No.3514/1999 is filed by Shri Kalu Naran Solanki and Shri Magan Keshav Makwana, praying for quashing and setting aside the direction of the Industrial Tribunal given in Ref. (IT) No.847/1984 to grant scale of Rs.260-400 including revised scale from 21.12.1989 and the said period from 21.12.1989 till the date of award be treated notionally. The petitioners have also sought for the declaration that the petitioners are entitled to get pay scale of Rs.260-400 from the date their juniors were given scale of Rs.260-400 from July/September, 1984. The petitioners have also sought for the direction

to the respondent to pay the arrears and difference of salary of pay scale of Rs.260-400 (New scale Rs.950-1500) to the petitioners with effect from July, 1984 till the date of award and further sought for direction to fix the salary of petitioners accordingly after adding yearly increment in the pay of petitioners and to pay new revised scale of Rs.950-1500 continuously.

3. The brief facts giving rise to these two cross petitions are that the petitioners in Special Civil Application No.3514/1999 had raised Industrial Dispute through their Union in respect of demand as under, relating to the petitioners:-

"Whether the following four employees should be given pay scale of Rs.260-400 with arrears from the date they are doing clerical work ?"

1.Shri Khimji Natha Rathod – Ready Store

Department.

2.Shri Kalu Naran Solanki – Parel Packing Department.

3.Shri Magan Keshav Makwana – Row Darg Department.

4.Shri Tukaram B. Hivra – Type Section.

4. The said industrial dispute was referred for adjudication to the Industrial Tribunal, Rajkot, by the State Government vide order dated 23.8.1984. Before the Tribunal the Union had filed Statement of Claim vide Ex.4 and Written Statement was filed by the respondent vide Ex.9. The petitioner's case was that Shri Kalu Naran Solanki – the petitioner no.1 was examined before the Tribunal vide Ex.32. That Shri Khimji Natha, Rajesh Hirva and Shri M.M.Ardeshna were working as Pharmacy Servants and were given promotion as Assistant and all are juniors to petitioners and they were

getting scale of Rs.260-400 (new scale Rs.950-1500). The respondent had also examined witnesses. Thereafter, Tribunal has decided the said Ref No.847/1984 on 3.10.1998 and granted the relief to the petitioners that the pay scale of Rs.260-400 or revised scale if the said pay scale is revised thereafter to the workman Shri Kalu Naran Solanki and Magan Keshav Makwana from 21.12.1989. The period from 21.12.1989 upto date of the award shall be treated as notional. The notional increment shall, however, be drawn for the purpose of pay fixation of the said two workmen. The demand for the said pay scale to Shri Khimji Natha Rathod and Shri Tukaram alias Rakesh B. Hivra was rejected as they have been given the said pay scale in the year, 1984. That the Tribunal has denied the arrears of salary to the petitioners from the date on which they were working and Tribunal has denied the

retrospective effect for pay scale of Rs.260-400 to the petitioners. The said direction of Tribunal is challenged by the petitioners in the Special Civil Application No.3514/1999.

5. As far as Special Civil Application No.1379/1999 is concerned, the case of the petitioner is that the State Government should not have referred the dispute to the Industrial Tribunal for this purpose and relief as the Division Bench of this Court in Special Civil Application No.4908/1986 dated 13.6.1991, filed by the Gujarat Ayurvedic Pharmacy Kamdar Mandal was dismissed by this Court on the ground that the promotion is a management function and there was no material to show that the management's action was malafide.

6. Since both these petitions arise out of the common judgment and award, the same are heard

together and disposed off by common judgment. The Tribunal has denied arrears of salary to the petitioners from the date on which they were working and has also denied the retrospective effect for scale of Rs.260-400 to the petitioners. The Tribunal has discussed this issue at length and given very cogent reasons. The Court does not think it fit and proper to interfere with the reasoning adopted by the Tribunal. The Court, therefore, does not incline to interfere in the finding arrived at by the Tribunal by entertaining this petition filed by the workers i.e. Special Civil Application No.3514/1999.

7. As far as petition filed by the Gujarat Ayurved Vikas Mandal Pharmacy is concerned, the facts revealed that the nature of work performed by the petitioners is same and hence they are entitled to pay scale of Rs.260-400,

which thereafter was revised to Rs.950-1500. The facts further revealed that the juniors to the petitioners were given pay scale of Rs.260-400 with effect from July 1984. The reference was referred for adjudication on 23.8.1984. Since the juniors have got the benefit, the petitioners should not have been denied the benefit on the ground that the promotion is management function and there was no material to show that the management's action was malafide. Since all others have got the benefit and petitioners were not granted benefit, it clearly reveals that the said action appears to be malafide.

8.It is, however, important to note here that the Tribunal considered the fact that this Court put the controversy at rest by its decision in Special Civil Application No.7670/1989 on 13.12.1989. Pursuant to the said order of this

Court, the workman, Shri Kalu Naran was reinstated in service on 21.12.1989, vide Ex.31 in furnace department. Hence the Tribunal thought it reasonable to grant pay scale of Rs.260-400 to the workman Shri Kalu Naran from 21.12.1989, considering his previous work of clerical nature and also considering that he has passed S.S.C. Examination. The Tribunal further observed that Shri Magan Keshav Makwana has not come forward and hence he was also held entitled to pay scale of Rs.260-400 from 21.12.1989, instead of from previous date. The Tribunal further observed that the dispute was tried very late by the parties concerned and since the pharmacy is a government body, the period from 21.12.1989 to the date of the award was treated as notional for all the purposes except the annual increments. This finding of the Tribunal cannot be said to be perverse or unreasonable and hence there is no question of

interfering in the award passed by the Tribunal.

9.For these very reasons, this Court has passed an interim order on 12.10.1999 by observing that it is not disputed that at present both the workmen are performing the duties of an Assistant in Class-III service. The Court has granted interim relief in terms of Para-7(B) on condition that both the respondents – workmen shall be paid salary equivalent to the minimum of the scale admissible to the post of an Assistant.

10. Considering the facts and circumstances of the case and taking overall view of the matter, the directions issued by the Tribunal so far as the two workmen are concerned, no interference is called for. Accordingly, Special Civil Application No.1379/1999 is also rejected.

11. In the result both these petitions are dismissed. The award passed by the Tribunal is confirmed. Rule is discharged in both the petitions without any order as to costs.

(K. A. PUJ, J.)

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